No. 3197

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

STEAMER AVALON COMPANY (a corporation),

Appellant,

vs.

HUBBARD STEAMSHIP COMPANY (a corporation), claimant of the American steamer "General Hubbard," her engines, boilers, machinery, tackle, apparel, furniture and cargo,

Appellee.

BRIEF FOR APPELLANT

On Appeal from the Southern Division of the United States District Court, for the Northern District of California, First Division.

IRA S. LILLICK,
Proctor for Appellant.

No. 3197

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

STEAMER AVALON COMPANY (a corporation),

Appellant,

vs.

HUBBARD STEAMSHIP COMPANY (a corporation), claimant of the American steamer "General Hubbard," her engines, boilers, machinery, tackle, apparel, furniture and cargo,

Appellee.

BRIEF FOR APPELLANT

On Appeal from the Southern Division of the United States District Court, for the Northern District of California, First Division.

Statement of the Case.

This is an appeal from the final decree of the Southern Division of the United States District Court, for the Northern District of California, which final decree awarded to appellant above

named (libelant below) the sum of two thousand ($2000) dollars for salvage services performed by said appellant and by the master and crew of the steamer "Avalon" to and for the American steamer "General Hubbard". (Apostles on Appeal, p. 210.) The action was a consolidated suit for salvage arising out of two libels, one filed by the owner of the steamer "Avalon" and the other by her master and crew. The same issues are raised in both actions, and the court below, in its opinion, made the award to appellant include that for the services of the master and crew. (Apostles on Appeal, p. 199.)

About midnight on the 24th day of July, 1916, the steamer "General Hubbard", while on a voyage from the Columbia River to the port of San Pedro, with a cargo of lumber, became disabled off the Oregon coast, at a point about fourteen miles N. E. ¼ East from Cape Meares, by reason of the breaking of her propeller shaft. Rolling in the trough of the sea, and without wireless equipment to enable her to make known her plight, she immediately sent up signals of distress, which were observed some time later by the steamer "Avalon", then at a point about four miles off Cape Meares' lighthouse, and on a voyage north to Willapa Harbor, in the State of Washington. The "Avalon" immediately changed her course, went to the assistance of the disabled vessel, and, at the request of her master, and after somewhat difficult maneuvering, passed a hawser to

her. Thereafter, the "Avalon" proceeded with the "General Hubbard" in tow toward the port of Astoria, and, with considerable danger, passed the entrance to the river and arrived safely at Astoria at 8:20 P. M. upon the 25th day of July, 1916.

In the lower court the claimant (appellee here) denied that the steamer "General Hubbard" was in distress at the time the distress signals were given by her, and maintained that she was merely disabled and in need of assistance. It was further denied that the service rendered by the "Avalon" was attended with any peril, or that the hawser was passed to the "General Hubbard" under difficult or dangerous conditions.

We were, therefore, met with the usual defense in a salvage suit, to wit, that it was quite out of the question that the salving vessel might have been damaged in performing the service, and that the service was merely the result of an agreement which could have been made with any one of numerous steamers with which communication might have been established.

Specification of Errors Relied Upon by Appellant.

Appellant's assignment of errors, presented and filed in the court below, is based upon the errors of the lower court in its findings concerning, and its

value of the property saved. (6) The degree of danger from which the property was rescued."

The court also says, in reference to the well-known rule, that public policy requires a liberal reward in salvage cases:

"Compensation as salvage is not viewed by the admiralty courts merely as pay, on the principle of a *quantum meruit,* or as a remuneration *pro opere et labore,* but as a reward given for perilous services, voluntarily rendered, and as an inducement to seamen and others to embark in such undertakings to save life and property.

"*Wms. & Bruce,* Adm. Prac., 116; 2 Pars. Ship., 292."

"The Daniel Steinman", 19 Fed. 918:

"It is a service not deemed desirable by owners of steamers, and the increasing importance of encouraging it has called from this court expressions which need not be repeated here. *'The Edam',* 13 Fed. Rep. 135. In *'The Rio Lima',* 24 Mitch. Mar. Reg. 628, Sir Robert Phillimore says:

" 'It has been impressed on the minds of the court that there seems to be a growing dislike on the part of owners of ships to allow their vessels to render assistance, even where no jeopardy of life is concerned. That must be met by a liberal allowance on the part of the court whose duty it is to consider all the circumstances of the case.' "

"The Grace Dollar", 103 Fed. 665;

"The Ereza", 124 Fed. 659.

The Value of the Property in Peril.

A question of prime importance for the consideration of this court is the character and value of the salvaged vessel, with her cargo, and of the value of the property hazarded in assisting the vessel in distress. On this point the libel as amended alleges that the value of the "Avalon" was two hundred thousand dollars ($200,000); that the value of the "General Hubbard" was four hundred sixty-five thousand dollars ($465,000), and that the value of the cargo on board the latter vessel was about twenty-five thousand dollars ($25,000). The evidence produced at the trial proved that the "Avalon" was of the steam schooner type, built for the lumber trade, in 1912, at a cost of one hundred twenty-five thousand dollars ($125,000); that during the year of 1916 the owner, the appellant herein, and libelant below, was offered on various occasions by ship owners sums ranging from two hundred thousand dollars ($200,000) to two hundred twenty-five thousand dollars ($225,000) for the vessel. (Hiscox, Apostles pp. 154, 155.) This witness, the secretary of the libelant company, knew the values of vessels of a similar type sold in the market at the port of San Francisco, and was of the opinion that the vessel had a market value of about two hundred thousand dollars ($200,000) in July, 1916. On his cross examination it appeared that market values for this type of vessel during the entire year of 1916 were increasing and that the market became quite

active along in June, and that freight rates increased very rapidly the first part of the year, reaching the maximum in June, and had held at that rate up to the time of trial. (Apostles p. 155.)

Witness Parr, called for the libelant below, had been in the steamship business for thirteen years, and showed by his testimony that he was well acquainted with the values of steam schooners on this coast. He knew the "Avalon" and placed a market value of one hundred seventy-five thousand dollars ($175,000) on her in June, 1916. (Apostles p. 159.) Captain Pillsbury, for appellee, when asked what, in his opinion, was the value of the "Avalon" in June, 1916, said: "Well, I suppose if I wanted to buy her I would have to pay about two hundred and twenty-five thousand dollars ($225,000) if I could get her. (Apostles pp. 193, 194.) The appellee offered no testimony on this point.

As to the value of the "General Hubbard", respondent's witness, Captain Pillsbury, testified that he appraised the vessel at three hundred fifty thousand dollars ($350,000) in her damaged condition, and estimated the necessary repairs at twelve thousand dollars ($12,000), making a total of three hundred sixty-two thousand dollars ($362,000). (Apostles p. 183.) That this is a low estimate appears from the captain's statement on cross-examination; that the fact that the "General Hubbard" was sold for four hundred sixty-three thousand, one hundred twenty-five dollars ($463,125) in cash (Stewart, Apostles p. 148) would not alter his opinion, as

his appraisal was made for a *special purpose—insurance.* (Apostles p. 189.) He admitted that three hundred fifty thousand dollars ($350,000) was a rather conservative appraisement of the vessel. (Apostles p. 192.) Also that the "General Hubbard" was built for the lumber trade (Apostles p. 186) in 1911, at an approximate cost of two hundred thousand dollars ($200,000). (Apostles p. 187.)

Witness Stewart, vice president of the claimant company, testified that the mill value of the lumber on board the "General Hubbard" at the time in question was fifteen thousand, eight hundred one and 21/100 dollars ($15,801.21), and that the freight was nine thousand, eight hundred eighty-one and 46/100 dollars ($9881.46). (Apostles p. 153.) So, for the present purpose, it may be considered that the total value of the property in peril on this undertaking was approximately six hundred twenty-six thousand, six hundred eighty-two dollars ($626,-682), and that of the property saved approximately four hundred twenty-six thousand, six hundred eighty-two dollars ($426,682). In the light of these facts, the sum of two thousand dollars ($2000) awarded by the court below for the salvage service performed can be seen to be entirely inadequate in consideration of the value of the property salved and the salving steamer, the "Avalon".

It is not our purpose to cite a long list of salvage cases and to contend that an award should be made in the instant case equal to awards made in the cases cited. We think, however, that it will ma-

terially assist this court in reaching a proper determination to call attention to a few cases where awards have been made for saving property of approximately the same value as the property saved in the present case. The court may then, as a guide in the way of precedent, pass upon the award made in the instant case in the lower court, and, considering the various elements of the cases cited, in comparison with those of the instant case, plainly perceive that the award made in the lower court was entirely inadequate to the service performed.

"The Gallego", 30 Fed. 271.

The steamer "Lone Star", valued at two hundred thousand dollars ($200,000), found the steamer "Gallego" drifting about twelve (12) miles off the east coast of Florida, with her rudder gone. The value of the "Gallego" with her cargo was found to be four hundred seventy-six thousand, four hundred sixty-four dollars ($476,464). The "Lone Star" made fast to her stern with hawsers and served as a rudder, thus assisting her to the port of Havana, where she arrived safely five days later. One storm was encountered, but the weather most of the time was calm. The court made an award of twenty-five thousand dollars ($25,000) to the "Lone Star" for the salvage service, and an additional two thousand four hundred fifty-one and 96/100 dollars ($2451.96) for actual damage incurred.

"The Italia", 42 Fed. 416:

The Steamer "Italia" broke her tunnel shaft, but made temporary repairs and proceeded on her voyage to New York at about three (3) knots. Her sails were set, but they were of no practical value in making headway. After covering two hundred and thirty-four (234) miles in this condition she was picked up by the libelant's vessel, also bound to New York, and towed to that port; the service occupying about four days. The weather was at times stormy, but the "Italia" was at no time completely disabled. The value of the "Italia", with her cargo and freight, was four hundred seventy-three thousand, four hundred twenty-one and 88/100 dollars ($473,421.88), and the libelant's vessel four hundred thousand dollars ($400,000). The salvage award was fixed at twenty-five thousand dollars ($25,000).

"The Charles Wetmore", 51 Fed. 449:

> "The 'whaleback' steamer W., valued, with her cargo, at $409,219, lost her rudder plates and was drifting shoreward in a storm near Tillamook Rock about 30 miles south of the mouth of the Columbia River. The steamer 'Zambesi', worth $220,000, bound from Victoria, B. C., to Portland, Or., having been driven south of the Columbia, discovered the 'Wetmore' flying signals of distress. With some difficulty a hawser was made fast, and the 'Wetmore' was towed near the mouth of the Columbia, but, no pilot being available, the vessels were held off the bar until next morning.

> The 'Zambesi' then steamed for the river, but when three and a half miles off McKenzie's Head, the hawser parted. It was recovered and again made fast during a period of increasing danger. A pilot was procured, and the bar was crossed in safety. The 'Wetmore', being very heavy, yawed from side to side, rendering it necessary to cross the bar very slowly, and, as the tide was flooding, the heavy seas traveled faster than the 'Zambesi', thus beating upon and sweeping over her, straining her decks, breaking in her house, and otherwise injuring and imperilling her. *Held,* that $20,000 should be allowed for salvage and distributed, $7000 to the 'Zambesi', $5000 to her master, $5000 to her crew, $2000 to the pilot, and $1000 to the mate."

"The Chatfield", 52 Fed. 479:

This steamship broke her propeller shaft when about fifty-three (53) miles out of port. She was picked up by the steamship "Brixham" and towed for nine (9) hours, part of the way back to port, the tow being completed by the steamship "City of Augusta" in twelve hours' time. The "Chatfield" was valued at four hundred thirty-five thousand dollars ($435,000). With her cargo and freight, the "Brixham", eighty thousand dollars ($80,000), and the "City of Augusta" at four hundred forty thousand dollars ($440,000). The weather was very stormy during the time the service was rendered, but the court said that the service could not be classed as of the highest grade of merit, on account of injuries to the saved vessel by collision during the tow. The award for both vessels was fixed at

twenty-seven thousand five hundred dollars ($27,-500).

"The Sun", 161 Fed. 385:

The steamship "Norwood" served as a rudder for the steamship "Sun", whose rudder stock was broken, and in this manner they proceeded about four hundred (400) miles to New York. The "Sun" was worth about five hundred thousand dollars ($500,000), and the "Norwood" from sixty thousand to seventy thousand dollars. It was pointed out by the court that the salvors encountered no extraordinary dangers, nor was any great skill or labor required of them; that the "Norwood" was in no peril and, while the peril from which the "Sun" was rescued was actual, still it was not immediately extreme. Also, the award would be larger if the "Norwood" had towed the "Sun", instead of merely serving as a rudder for her. A salvage award of thirteen thousand five hundred dollars ($13,500) was made, together with six hundred seventy-two and 38/100 dollars ($672.38) for expenses and costs

In the recent case of *Merritt & Chapman Derrick & Wrecking Co. v. "The Sahara"*, 246 Fed. 141, Judge Rose, of the Maryland district, awarded the sum of twelve thousand five hundred dollars ($12,-500) on a value salved of four hundred thousand dollars ($400,000), and a value of the salving property of only one hundred thousand $100,000). In that case the vessel grounded on the Atlantic coast of Virginia, near Ship Shoal Inlet; was not in a

position of much danger, and was relieved at high water by a few hours' work of the wrecking tug "Rescue" without assistance from the "Sahara's" engines. In the case cited neither the crew nor the "Rescue" encountered serious risk.

When the case at bar is considered in the light of the foregoing cases, and the value of the "General Hubbard" and her cargo and of the "Avalon" is taken into consideration, in comparison with the value of the property salved in the cases cited, it will be plainly evident, we think, to this court that the award of two thousand dollars ($2000), made in the court below, for the salving of the "General Hubbard", and her cargo, is ridiculously small. We unhesitatingly ask that it be raised to at least $10,000. At the time the "General Hubbard" was in distress we are satisfied her owners would have been glad to agree to pay $12,500 or $15,000 for the assurance that she would be delivered safely at Columbia River.

Having established, therefore, the error of the lower court in awarding salvage inadequate in amount for the services performed by both the "Avalon" and her master and crew; and having thus shown that the value of the steamer and cargo salved and of the salving steamer, together with the earning power of the latter, and the damages which she was likely to sustain during the salvage service were not properly considered by the lower court in making its award; it but remains for us to establish that the lower court did not properly consider and

find as to the sole other element necessary to establish our claim that we are entitled to an award greater than that made by the court below, to wit: That

2. THE COURT ERRED IN FINDING AND HOLDING THAT THE SERVICES PERFORMED BY THE STEAMER "AVALON" TO THE STEAMER "GENERAL HUBBARD" WERE NOT ATTENDED BY ANY SPECIAL DANGER.

The court below in its opinion held that the salvage services performed by the "Avalon" to the "General Hubbard" were not attended by any special danger (Apostles on Appeal, pp. 198, 199), and for that reason made the award which we contend was, and is, an inadequate reward. We here desire to present our argument as to Assignments of Error 2 and 3, hereinbefore set forth, for the reason that the services performed by the "Avalon" to the "General Hubbard" included the making fast of the hawsers of the former to the latter, and because the element of danger was present throughout the entire salvage service.

The Circumstances Surrounding the Rescue.

Captain Christensen, master of the "Avalon", called for the libelant, gives the story of the rescue in substance as follows (Deposition, direct examination, Apostles on Appeal pp. 24 et seq.):

> "I have been going to sea twenty-six (26) years and during seventeen (17) years of that time I served as master; before that I was first officer, second officer and third officer. I

have been master of the 'Avalon' over four years.

On the night of June 24th-25th, about twenty minutes past twelve, we were about fourteen (14) miles west-northwest of Cape Meares. I was asleep in my room when the first officer came and called me. He told me that there was a steamer to westward sending up distress rockets and playing the searchlight in the sky. We were about three and a half (3½) miles aft of her when I got up on the bridge and she was still playing her searchlights up. When I got up close to him I stopped my ship and hailed him. I said, 'Captain, what can I do for you?' and he said, 'I am broke down. Can you tow me to Astoria?' and I said, 'Why, certainly, I will try it.' I then went out to the west a little, got my hawser and things ready and started to pick him up; to get him in tow. The wind, a light breeze, was west-northwest and a moderate swell was running, a northwest swell. The 'General Hubbard' was lying headed about W. S. W. She was lying right in the trough of the sea, rolling. She had a cargo of lumber on board and a deckload about sixteen (16) feet high.

Q. Do you know from what you saw whether the 'General Hubbard' was able to keep her head up to sea?

A. Not the way she was lying there; she was lying in the trough of the sea, and she had no means, as her engine was disabled and there were no sails bent on the masts.

I went up alongside of her first and steamed up ahead a little bit, stopped my engine and gradually let my ship drop astern until I got within 30 or 40 feet of him—my stern from his bow—and then I threw a heaving line to him. He made fast to the 'Avalon's' hawser and we started for Astoria about 2:30 o'clock and arrived off the Columbia River at

the bell buoy about 4:30 o'clock. It was a dark night; the stars were shining, but there was no moon."

Nothing further of importance was brought out in the cross-examination, but in the redirect examination of this witness (Deposition, Apostles on Appeal pp. 33, 34) it appears that no other vessels were in the vicinity except one about five (5) miles inside the "Avalon". She did not come up at all, and probably did not see the signals of distress sent up by the "General Hubbard".

The next witness for libelant, Peter Rodland, the chief engineer of the "Avalon", corroborates the testimony of the captain that the "General Hubbard" was lying in the trough of the sea, and says that he saw no other vessels except the steamer inside when they maneuvered to get the hawser on board. (Apostles on Appeal, pp 36, 37.)

In regard to the distress signals sent up by the "General Hubbard", her captain testified as follows (Watts' Deposition, Apostles on Appeal, pp. 95, 96):

"Q. What rockets did you send up first?

A. I sent up the ordinary rockets, you know, the ordinary rockets that burst in stars.

Q. How many did you send up the first time?

A. I could not tell you how many I sent up; I used to send one up every 15 or 20 minutes.

Q. Didn't you send up first three or four in rapid succession and then wait a little while?

A. No, I never done that at any time; I sent them up myself, too.

Q. You sent up one?

A. One; and then after sending up one rocket I burned a blue light.

Q. Then you waited for 15 minutes?

A. Yes, 15 or 20 minutes.

Q. In the meantime you received no answering rocket?

A. Received no answer at all.

Q. Then you sent up another rocket, burnt another light, and no answer?

A. Yes.

Q. And then the third time you saw the lights of the 'Avalon', did I understand you?

A. Well, I think it was more than that; it was the fourth or fifth time before we saw the lights of the steamer which afterward turned out to be the 'Avalon'."

This witness also stated that the "General Hubbard" carried no wireless and no attempt was made to rig up any sort of sails. (Apostles on Appeal pp. 98, 99.)

There is no material conflict in the testimony up to this point except with reference to the effect of the wind, sea and swell upon the "General Hubbard" when she was lying in the trough of the sea before she was taken in tow by the "Avalon". We think, however, that what Captain Christensen terms "a light breeze" and "a moderate swell" is the usual conservative description of the wind and sea from the standpoint of one in his position, *after* the peril had passed. A helpless vessel in such a position as was the "General Hubbard" certainly was in distress.

The Difficulties Encountered in Making Port.

Continuing, Captain Christensen says (Apostles on Appeal pp. 28, 29):

> "The biggest difficulty was at Red Buoy No. 4, right opposite the south jetty; we laid there for about a half an hour, could not make an inch of headway as there was no flood tide; there was a heavy freshet in the river. My engines were working full speed ahead all the time. A strong tide was running out and it had the effect of setting the 'Hubbard' southward all the time, toward the south jetty; I was headed up to the northward; she was standing in the direction from me shaping south towards the jetty. It would not have taken but very little and she would have gone on the south jetty, and she would have taken me with her. I finally picked up speed, went through and proceeded up the river to Astoria, where I dropped anchor."

Witness Rodland states (Deposition, Apostles on Appeal p. 36) that there was a strong freshet running in the river and they had difficulty in getting in; that it took them a long time to get over the bar because the current was too strong.

Captain Watts of the "General Hubbard" gave his general opinion that there was no danger to either of the vessels in passing over the bar and into the channel of the river (Deposition, Apostles on Appeal pp. 85, 86), but admitted that they made very slow progress opposite the south jetty—about a mile and a half an hour—on account of the strong current in the channel. (Apostles on Appeal pp. 93, 94.) The suggestion is made by this wit-

ness that the captain of the "Avalon" should have anchored off the channel entrance and waited for a flood tide. We are not disposed to regard this suggestion seriously in the absence of any evidence showing that it was made in due season to the captain of the "Avalon". Also, if Captain Watts had requested that he be permitted to anchor outside, his request certainly would not have been denied. Furthermore, there is no evidence tending to show that it would have been safer to have entered on a flood tide rather than on an ebb tide. There is no such presumption, and, on the contrary, the ebb tide probably was the most favorable one under the circumstances. It is true that an ebb tide would increase the resistance of the water, but on the other hand a vessel is under better control in running against a current. Again, the flow of a flood tide against a strong current in a channel made by a freshet would produce tide rips and cause the vessel and its tow to sheer more than they actually did, and perhaps become unmanageable. There is nothing in fact to support the conclusion of Captain Watts that it was an error of judgment on the part of the "Avalon" to attempt the channel on an ebb tide; but, on the contrary, it would seem to have been advisable to risk having sufficient power to tow the "General Hubbard" and to make the channel while both vessels were under better control.

The keeper of the Coast Guard, O. S. Wickland, called for respondent, testified that when the ves-

sels were in sight of his station near the channel entrance the weather was clear at times with occasional rain squalls. (Apostles on Appeal p. 118.) That the current was running out when they came in, but he apparently was not certain whether there was a flood or ebb tide. (Apostles on Appeal, p. 120.) He disagrees with the other witnesses that the tow was made along the north shore of the channel and says that as far as he was able to make out they passed through mid-channel; that the "Avalon" did not appear to have any particular difficulty in making the tow and that in his opinion neither of the vessels were in any peril. (Apostles on Appeal p. 120.)

On cross-examination this witness admitted that there might have been a good deal of a freshet in the river, as there was always more or less freshet at that time of the year. That under such circumstances the tide runs out quite awhile after low tide (pp. 123, 124), and that it could be felt in a westerly direction to beyond the lightship (p. 125). It further appeared on cross examination that the jetty consisted of rock piling, but for a considerable distance from the end the piling had been shattered and what was left was mostly under water (pp. 126, 127). The witness says that in very heavy seas (and he might have added "in a swift current caused by a freshet and ebb tide") there would be danger of parting the hawser and that there would be danger of the towing vessel losing her propellor. That there would be danger of drifting out over the

bar, either to the north or the south side and on to Peacock Spit, but was unable to say what would have been the probable result in the present case. (pp. 127, 128.) In view of the fact that the wind was not from the north or northwest, which is the prevailing wind at that time of the year but, as Wickland testified, the weather was squally, the vessels would in all probability have been in greater danger of piling up on Peacock Spit than on the south jetty.

At the trial of the case in the court below there was an attempt upon the part of the claimants (appellee here) to lay great stress on the fact that there was no storm raging at the time of the rescue, or during the tow to Astoria. While it is true that no bad weather was encountered, still that is not the only element to be considered, and in no way should it have had the effect of reducing the award to the insignificant amount of two thousand dollars ($2000). That it is not only the clearly apparent danger that is considered, but also the undisclosed risks and numerous accidents which might happen to a vessel engaged in such an undertaking, has been well established by the decisions in numerous salvage cases.

In the case of *"The Great Northern"*, 72 Fed. 678, on page 682, it is said:

> "In services of this character a very considerable part of the danger and difficulty arises at the commencement of the service. Hawsers are not made fast between large vessels in the South Atlantic, even in fine weather,

without risk; and the mere maneuvering of the 'Hawkhurst' (the salving ship) and the commencing to get a strain upon the towing hawser was a service certainly attended with some danger."

Again on page 683:

"Fortunately for both ships, the weather and sea proved favorable after the towage was commenced. This last fact seems to be relied upon by the respondents as a reason for diminishing the amount which might otherwise be awarded to the salvors. Sufficient has been said to show that this principle does not hold good in admiralty. The good fortune of better weather and a quieter sea, which occurred during the course of the towing service, inured alike to both ships, and does not entitle the salved ship to claim the benefit of it, to the injury to the salving vessel."

We quote from *"The City of Puebla,"* 153 Fed. 925, on page 926 (opinion by Judge de Haven of this district):

"The wind had moderated, the sea was not rough, and the 'Puebla' was not in imminent danger at this time. The peril to which she was exposed was the probability of meeting with stormy weather, which at this season was very likely to occur, and which she was in no condition to withstand for any great length of time. Fortunately, such weather was not in fact encountered during the time the 'Puebla' was being towed into the port of San Francisco; but, if storms or adverse winds had been met, the service undertaken by the 'Chehalis' would have been rendered difficult, and in some degree dangerous. Indeed, it may be said to be a fact so well known as to be a matter of common knowledge among seafaring men that, in

towing a disabled vessel at sea great care is required, even under favorable conditions of weather, to guard against the dangers incident to such employment."

"The Daniel Steinman", 19 Fed. 918:

"I have considered also the risk incurred by the 'Republic'. It is true that the weather was fair and the sea smooth during the whole time that the 'Republic' had the 'Steinman' in tow; but it is also true that towing a disabled steamer of the size of the 'Steinman' by a steamer of the size of the 'Republic' is always attended with danger. In such a service care and watchfulness will not always prevent disaster. Says Sir Robert Phillimore, in deciding the case of *'The City of Chester,* 26 Mitch. Mar. Reg. 111:

'It is well known, and the Elder Brethren say, that in all these cases of large steamships rendering service to each other, there is very great danger, and they will require skillful navigation to avoid it.' "

A word more as to the amount of the award. It is not what *after* such a service has been completed the event shows as to the danger involved—it is the condition in which the salved vessel was at the time of the commencement of the salvage service. The "General Hubbard" was helpless and not even able to keep her head up to the sea. She had a deckload 16 feet in height and, lying as she was, with every swell rocking her from side to side, counsel for claimant can not fairly claim that she was in no danger. No one acquainted with the sea can fail to realize the danger of losing at least the deckload under these circumstances. The deck lash-

ings were undoubtedly intended to be strong enough to hold the deck cargo in place under ordinary conditions, but the danger of loss under the conditions here need only to be referred to in order to be appreciated. Had either owners or insurance companies (if she was insured—and she no doubt was) been in a position where they could have been consulted, is there any doubt but that their anxiety *then* over the safety of the vessel would have persuaded them to enter into an agreement to pay a fair compensation to insure the safety of the "General Hubbard" and her cargo? The court, we believe, must know something of the amounts charged by marine insurers as premiums for insuring vessels in the trade in which the "General Hubbard" was engaged. If we assume a value of approximately $425,000 for the steamer and her cargo, 2½% of that amount (and by specifying this percentage we do not intend the court to understand that it has any relation to the percentage charged by marine insurers) would amount to $10,625. This without any relation to the value of the "Avalon". Is it improper to suggest that had the owners of the property at risk, as the salved, and salving, been able to discuss the matter when the signals of distress were being given on the "General Hubbard", when she saw the "Avalon" proceeding on her course, and they had in mind the danger in which the "General Hubbard" then was, and would thereafter be, when going into the Columbia River, those interested in the "General Hubbard" and her cargo

would have been glad to offer at least 2½% of the values at stake, and been willing to pay even more?

Upon motion duly noticed and made by appellant in this court, to introduce new evidence as to the amount paid by appellent (libelant below) to the master and crew of the "Avalon" as consideration for the assignment to the appellant by said master and crew of their claim for compensation for salvage services performed to the "General Hubbard". this court made an order permitting a statement of the amount so paid to be included in this brief. The Steamer Avalon Company paid the crew one-half a month's wages. This totaled $885.

In view of the fact, therefore, that the sum of $885 was paid by the appellant to the master and crew of the "Avalon" as consideration for an assignment of their claims, and by so doing the appellant assumed the burden of the cost of the litigation, and in view of the value of the steamer and cargo salved, and that of the salving steamer, together with the earning power of the latter, and the damage which she was likely to sustain during the salvage service; and in further view of the danger consequent to the passing of hawsers from the "Avalon" to the "General Hubbard", and the towing of the "General Hubbard" into port; it is our contention that the award in the court below was, and is, entirely inadequate to the salvage service performed by the steamer "Avalon" and her master and crew. It is our further contention that the court below erred prejudicially to this appellant

by not taking the facts into proper consideration and in making the aforesaid inadequate award. We respectfully ask the reversal of the decree of the court below, and that such judgment be rendered herein as to this court shall seem proper.

Dated, San Francisco,
October 5, 1918.

Respectfully submitted,

IRA S. LILLICK,
Proctor for Appellant.